

1 Q You don't know if the document was sent to Paul  
2 Crouch in draft form?

3 A That's right. I don't know.

4 Q Do you know if the document was sent to Jane Duff in  
5 draft form?

6 A No, sir, I don't know.

7 Q Was the document sent to, to, to Norman Juggert  
8 before it was filed?

9 A No, sir.

10 Q So, it wasn't sent to anybody connected with Trinity  
11 or NMTV before it was filed? That's what you're testifying  
12 to.

13 A Not that I know of.

14 Q And am I correct that the document was sent to Paul  
15 Crouch after it was filed?

16 A I don't know that.

17 Q And do you know if a document was sent to Jane Duff  
18 after it was filed?

19 A Yes.

20 MR. COHEN: Now I want to ask you a question about  
21 the document, and it's been -- I believe it's been admitted  
22 into evidence, Your Honor. I have copies of it. Am I cor--  
23 I -- it's --

24 MR. SCHONMAN: Glendale 216.

25 MR. COHEN: It's Glendale 216, yes. And I have, I

1 have a copy of it.

2 MR. MAY: I'm sorry, Mr. Cohen, but --

3 MR. COHEN: Well, I don't have an extra copy. Could  
4 you make a copy available? I thought I had a copy for him,  
5 but I don't.

6 MR. MAY: The volumes of exhibits I have stop at  
7 206.

8 JUDGE CHACHKIN: No, it was an exhibit off the tabs  
9 of the --

10 MR. COHEN: No, it was an exhibit offered during the  
11 hearing.

12 BY MR. COHEN:

13 Q Now, the document is signed by -- on page 27 it's  
14 signed by -- I guess by Joe Dunne, but he signs your name too.  
15 Is that correct?

16 A No, sir. Page 27 isn't a signature --

17 Q Thir--

18 A -- page.

19 Q Excuse me, 37. I misspoke.

20 A Yes, sir.

21 Q There's no date on the document, but you -- this was  
22 the document that was filed with the Commission. Am I  
23 correct?

24 A It, it appears to be, Mr. Cohen, but I, I don't see  
25 on the first page the -- before the FCC letterhead, which

1 | would have been our normal practice. So, I don't know whether  
2 | there was -- there's more to this or whether this was a ear-  
3 | lier addition or not, sir. I can't tell you now just looking  
4 | at this document.

5 |           MR. COHEN: This came from our files. And do you  
6 | have any reason to believe, Howard, Mr. Topel, that this is --  
7 | that this was not the document that was filed with the  
8 | Commission?

9 |           MR. TOPEL: No. I -- are there -- there may be, you  
10 | know, preliminary pages missing. I have a copy here that has  
11 | a Table of Authorities, a Table of Contents --

12 |           MR. COHEN: But have you examined Glendale 216? I  
13 | want to make sure that I haven't -- that I have a document  
14 | that was filed and it's not a --

15 |           JUDGE CHACHKIN: Well, apparently it's stipulated  
16 | that this is part of the document that was filed. Apparently,  
17 | the Table of Contents and other things were eliminated, but  
18 | this appeared -- this is the -- beginning with the request,  
19 | that the rest of the document, this was it.

20 |           MR. TOPEL: I have no reason --

21 |           JUDGE CHACHKIN: All right.

22 |           MR. TOPEL: -- to believe that --

23 |           MR. COHEN: That's fine, Your Honor.

24 |           MR. TOPEL: -- this Exhibit is not the document that  
25 | was filed.

1 MR. COHEN: That's all I wanted to satisfy myself.

2 JUDGE CHACHKIN: All right. Thank you.

3 BY MR. COHEN:

4 Q Now, section (b), beginning on page 6, discusses  
5 NMTV management and operation. Do you see that?

6 A Yes, sir.

7 Q And you'll notice that paragraph 9 is the, is the  
8 paragraph that deals with Reverend Aguilar. Do you see that?

9 A Yes, sir.

10 Q Am I correct that the purpose of paragraph 9 was to  
11 discuss Reverend Aguilar's role in NMTV's management and  
12 method of operation?

13 A Yes, sir.

14 Q Now, take a minute and read paragraph 9 to yourself.

15 A Yes, sir.

16 Q Now, was that paragraph complete in terms of descri-  
17 bing Reverend Aguilar's role in NMTV's management and method  
18 of operation?

19 A I believe so. Yes, sir.

20 Q And you believe it didn't omit any information  
21 concerning Reverend Aguilar's role in NMTV's management and  
22 method of operation?

23 A I suppose it could have said that he votes at the  
24 meetings, that at the meetings he engages in discussions and  
25 other things along those lines, but generally I think yes,

1 | sir, what you've asked is, is the case, that this generally  
2 | described what he is and what he does.

3 |       Q     And, and it, it was, it was -- it's your opinion  
4 | that no -- excuse me -- information is omitted concerning  
5 | Reverend Aguilar insofar as he participated in NMTV's manage-  
6 | ment and method of operation?

7 |       A     No, sir, other than what I've just described about  
8 | how he would have voted at meetings. It doesn't specifically  
9 | say that.

10 |       Q     And you are a practicing attorney before the  
11 | Commission since 1980, correct?

12 |       A     Yes, sir.

13 |       Q     So, you know what the word "candid" means, don't  
14 | you?

15 |       A     Yes, sir.

16 |       Q     And is it your opinion that paragraph 9 is a candid  
17 | description of Reverend Aguilar's participation in NMTV's  
18 | management and method of operation?

19 |       A     Yes, sir.

20 |             MR. COHEN: Now, turning to another document, I want  
21 | to bring your attention to an Opposition to Petition to Deny  
22 | that was filed by TBN. And this is a new document, Your  
23 | Honor, so I have copies.

24 |             JUDGE CHACHKIN: Is this a document you're now  
25 | having marked for identification?

1 MR. COHEN: Yes, sir. Oh. It's going to be -- it's  
2 called Consolidated Opposition to Petitions to Deny. What's  
3 my next number, Your Honor?

4 JUDGE CHACHKIN: I believe your next number is 220.

5 MR. COHEN: Thank you. Now, regarding this, this  
6 document, Your Honor, I want the record to reflect that I have  
7 in the hearing room a copy of the document as received by us  
8 which contains material that's been omitted, and the document  
9 that was received by us has an Executive Summary and it has  
10 many attachments which I have not xeroxed for purposes of my  
11 examination, but the original document is available in the  
12 room if, if it's needed.

13 JUDGE CHACHKIN: Well, what it -- what are you  
14 intending --

15 MR. COHEN: I am offering --

16 JUDGE CHACHKIN: -- to identify?

17 MR. COHEN: -- the text, Your Honor. I'm going to  
18 have it marked for identification, the text only. What I,  
19 what I'd like to do, Your Honor, is, is have the, the report-  
20 er's copies after lunch. I see I don't have enough copies.

21 JUDGE CHACHKIN: You want to give the reporter one  
22 copy? Is that --

23 MR. COHEN: No. I want to give the witness one,  
24 so --

25 JUDGE CHACHKIN: Till he's finished with testimony.

1 MR. COHEN: Yeah.

2 JUDGE CHACHKIN: I assume you'll give the --

3 MR. COHEN: Exactly.

4 JUDGE CHACHKIN: -- reporter one. Now, you want to  
5 mark for identification the Consolidated Opposition,  
6 Consolidated Opposition to Petition to Deny?

7 MR. COHEN: Yes. And that's -- what was that number  
8 again, Your Honor?

9 JUDGE CHACHKIN: 220 is your next number. The  
10 document consisting of 23 pages will be marked for  
11 identification as Glendale Exhibit 220.

12 (Whereupon, the document referred to  
13 as Glendale Exhibit No. 220 was  
14 marked for identification.)

15 BY MR. COHEN:

16 Q Now, this document, Mr. May, you recognize that, I  
17 take it?

18 A Yes, sir.

19 Q Okay. And your name is on the -- in the signature  
20 block, but it's signed by -- I take it that's your partner's  
21 signature. Is that correct?

22 A Yes, sir.

23 Q Okay. Were you involved in the preparation of this  
24 document?

25 A Yes, sir.

1 Q Now, was this document sent in draft form to Paul  
2 Crouch?

3 A I don't recall --

4 Q Do you --

5 A -- that it was, no, sir.

6 Q Do you recall if it was sent in draft form to any-  
7 body in California?

8 A I don't recall, no, sir.

9 Q Was it sent in -- as filed to Paul Crouch?

10 A I believe so, yes, sir.

11 Q Was it sent as -- in its -- as filed to Jane Duff?

12 A I, I believe so, yes, sir.

13 Q Was it sent as filed to Reverend Aguilar?

14 A I believe so.

15 Q Now, I want you to look at page 12, section (b), and  
16 B commences on page 12 and continues through 13 onto 14. And  
17 don't read it into the record, but spend as much time as you  
18 need just reviewing that, because I want to ask you some  
19 questions about that section.

20 A You want me to read through --

21 Q Just section (b), beginning on page 12.

22 A Through page 14.

23 Q And it continues through page 13 and it continues  
24 through the, the middle of page 14.

25 (Pause.)

1 MR. MAY: Okay. I've read them, sir.

2 BY MR. COHEN:

3 Q Now, there -- on -- in, in section (b) at the bottom  
4 of page 12, the first issue that's raised is who controls the  
5 licensee's financial affairs. Do you see that?

6 A Yes, sir.

7 Q And then commencing on page 13, the document sets  
8 forth information concerning who controls the licensee's  
9 financial affairs. Do you see that?

10 A Yes, sir.

11 Q Now -- and I take it you've read page 13.

12 A Yes, sir.

13 Q Is it your view that the information regarding who  
14 controls the licensee's financial affairs was complete?

15 A Yes, sir.

16 Q And was -- is it your view that the information is  
17 candid?

18 A Yes, sir.

19 Q Now, tell me briefly what this is a Consolidated  
20 Opposition to Petition to Deny? What was the Petition to  
21 Deny?

22 A I believe it was your client's filing of a Petition  
23 to Deny against the WHFT TV in Miami, Florida, Renewal  
24 Application.

25 Q And the discussion on who controls the licensee's

1 financial affairs, am I correct, is a discussion concerning  
2 the financial activities regarding the Portland station?

3 A I think it's broader than just the Portland station,  
4 but that's part of it.

5 Q Well, I direct your attention to par-- to page 13,  
6 and the first full paragraph. Doesn't that specifically concern the Portland station and the Portland station only?

8 A Yes, sir, but that seems to be more focused on  
9 personnel. I thought you were asking about finances.

10 Q I was. And continuing on on page 14, there's a  
11 discussion about the control of NMTV's finances. Do you  
12 notice that?

13 A Yes, sir.

14 Q And it states that, "NMTV also controls its own  
15 finances, i.e., generates its own revenue, solicits for its  
16 own contributions, and files its own tax returns and  
17 managements its own bank accounts." Is --

18 A Yes, sir.

19 Q -- that correct?

20 A Yes, sir.

21 Q Okay. Now, in connection with NMTV controlling its  
22 own finances, why was there no mention of the fact that the,  
23 the dollars to buy the Portland station, the dollars to construct it and operate it, came from Trinity?

25 A In this context, I think we're thinking about how

1 they conduct their operations, and these people are -- I guess  
2 I just didn't think that that was, was part of the considera-  
3 tion.

4 Q Didn't that deal with how NMTV conducted its opera-  
5 tions, the fact that it obtained all the money from Trinity to  
6 construct and operate the station?

7 A Well, it says that NMTV controls its own finances,  
8 and in that context I, I guess I just didn't think that the  
9 Portland facility, which had been on the air for awhile,  
10 several years at that point in time, I, I guess I just didn't  
11 think about it.

12 Q Now, the document states that NMTV "generates its  
13 own revenue, solicits for its own contributions, files its own  
14 tax returns and manages its own bank account." The document  
15 says nothing about the agreement to provide business services  
16 whereby Trinity provides a host of services to NMTV. Why was  
17 that not set forth?

18 A I guess -- I mean, it didn't occur to me. That's a  
19 ministerial function -- I mean, you can get an outside firm to  
20 do all of those things that are indicated there and I wouldn't  
21 have included it if it had been a different company or a  
22 payroll company or -- even if it was just a bank that did  
23 those things for, for a client or a customer.

24 Q Now, it states that NMTV "manages its own bank  
25 accounts," doesn't it?

1           A     Yes, sir.

2           Q     But it doesn't state that no NMTV Director who is  
3 not a TBN employee was authorized to sign checks. Why was  
4 that not stated?

5           A     Because they're doing it in their roles and respon-  
6 sibilities for National Minority TV. But, for example, they  
7 have an Assistant Secretary that will sign checks. But he is  
8 an Assistant Secretary of National Minority TV.

9           Q     Are you aware that the -- that paragraph (b) --  
10 section (b) was designed to deal with the, with the  
11 Commission's definitions of control?

12          A     Yes, sir.

13          Q     And are you, are you suggesting to me seriously  
14 that, that, that, that the, the facts that I -- that have been  
15 omitted wouldn't -- don't deal with the Commission's tradi-  
16 tional test of control? Is that your testimony, Mr. May?

17          A     It, it didn't occur to me in the context of what we  
18 were describing here, that those items were something that,  
19 that was -- it, it controverts -- or different than what we  
20 were expressing.

21               JUDGE CHACHKIN: You didn't answer the question.

22               MR. COHEN: No.

23               JUDGE CHACHKIN: Does it deal with the traditional  
24 -- Commission's traditional consideration of whether control  
25 exists?

1 MR. COHEN: That's the question.

2 JUDGE CHACHKIN: The items which were omitted.

3 MR. COHEN: That's the question.

4 MR. MAY: I -- no, sir, I don't believe they do.

5 BY MR. COHEN:

6 Q Are you -- you've practiced before the Commission  
7 since 1980?

8 A Yes, sir.

9 Q And are you familiar with the important precedents  
10 which determine de facto control, Mr. May?

11 A I believe I have a general understanding. I mean --

12 Q Well, let's talk about that. Do you have an under-  
13 standing of any of the cases that are cited in the Designation  
14 Order?

15 A I've read the cases at some point in time.

16 Q And are you familiar with the Trustees of University  
17 of Pennsylvania case?

18 A I can't say that I am specifically until such time  
19 as it came up in the Reply materials.

20 Q You're -- that was not a case that, that, that you  
21 were familiar with that dealt with, with the -- with de facto  
22 control of a nonprofit corporation where the Commission took a  
23 license away from a corporation on the grounds that de facto  
24 control occurred?

25 A I can't say that, that it was a de-- no, sir. I

1 can't say that that was a case that I was specifically dealing  
2 with in the context of preparing this document.

3 Q Did you ever read that case?

4 A I believe I've read it since the Replies were filed.

5 Q But prior to that time you never read it?

6 A I, I don't recall that I did or didn't.

7 Q Did you read that case in connection with the, with  
8 the, with the preparation of the Opposition to Petition to  
9 Deny?

10 A I don't recall that I did.

11 JUDGE CHACHKIN: Did you review any Commission  
12 precedent on the question of control before your submitting  
13 your, your Opposition? And if so, what case did you review on  
14 the question of control?

15 MR. MAY: I'm -- I don't know that I can tell you a  
16 specific case right now as I sit here that I reviewed at that  
17 point in time.

18 BY MR. COHEN:

19 Q So, you signed this document and, and the document  
20 purports to speak -- even under the traditional commercial  
21 standard, petitioners have not made a prima facie case that  
22 Trinity Network and Dr. Crouch control NMTV, and you never  
23 reviewed any Commission precedent before you signed this --  
24 before your partner signed this document? Is that, is that  
25 your testimony?

1       A     I can't recall to you a specific case by name that I  
2 can tell you now. I have responsibilities for certain por-  
3 tions. This was a collective effort by a number of lawyers,  
4 and I don't have any specific memory along that, that line or  
5 be able to recall you a specific case as I sit here today.

6       Q     Well, let's continue on. Now, we're still under the  
7 -- who controls the sta-- the licensee's financial affairs  
8 criteria which is set forth on page 12. And my question is,  
9 why was there no mention that all purchase orders and check  
10 requisitions over \$1,000 required two signatures and that the  
11 only persons authorized to sign those checks were TBN  
12 employees?

13       A     Mr. Cohen, I don't think that was part of the con-  
14 trol question. I mean, that's a audit function that is de-  
15 signed to make sure there's compliance with Internal Revenue  
16 Service things. It's not a question of control in the sense  
17 in which you're now speaking of it or in the way in which we  
18 were addressing the issue here in this, in this -- in these  
19 papers.

20       Q     And why was there no mention made of the fact that  
21 NMTV used TBN's accounting department and all NMTV accounting  
22 information was kept by TBN's employees?

23       A     Because I regarded those as being ministerial. I  
24 mean, they could be performed by virtually any entity or  
25 organization.

1 JUDGE CHACHKIN: Did you look up any cases to see  
2 whether your views were consistent with Commission precedent  
3 as to what constitutes control?

4 MR. MAY: We looked at the issue, Your Honor, and,  
5 and I read a number of cases that I thought either didn't  
6 address it in the, in the specific context here or that we  
7 otherwise felt we were in compliance with.

8 JUDGE CHACHKIN: Well, what case did you look up on  
9 which you relief?

10 MR. MAY: I honestly cannot recall any case at this  
11 point in time, Your Honor, as I sit here --

12 JUDGE CHACHKIN: Not a single case can you recall  
13 that you looked up and relied on on something that was submit-  
14 ted in 1992? You can't recall a single case that you looked  
15 up and you relied on in responding to this petition. Is that  
16 your testimony?

17 MR. MAY: Well, Your Honor. It references here the  
18 Stereo Broadcasters case, but, I mean, I cannot recall the  
19 specifics of the facts in the Stereo case.

20 JUDGE CHACHKIN: Well, was there something in Stereo  
21 which supported your position that these are ministerial  
22 matters, the question of who, who be -- who, who controls,  
23 whose accounting system is used, whose, whose accounting  
24 department is used, who handles the checks, who handles all  
25 the invoices? Was there something in Stereo which supports

1 your view that this constitutes a ministerial matter?

2 MR. MAY: I can't say that there is or isn't, Your  
3 Honor. I can't recall.

4 JUDGE CHACHKIN: Well, what -- where do you come to  
5 the conclusion that these were ministerial matters?

6 MR. MAY: My own office, for example. I have out-  
7 side services that perform functions for me. And the sugges-  
8 tion that somehow that means they control me or otherwise can,  
9 can dictate to me what happens is not, not reality.

10 JUDGE CHACHKIN: Are you suggesting, sir, that the  
11 fact that you employ a service is, is somehow analogous to the  
12 situation between Trinity and NMT-- and National Minority?  
13 Are you suggesting that, that's analogous?

14 MR. MAY: Well, Your Honor, the -- I mean, it's,  
15 it's analogous in my experience. It's also that in the  
16 context of the relationship between these two entities, it was  
17 in regard to a specific Commission policy, and the policy  
18 permitted these cognizable interests to occur between these  
19 two companies. And among those were that Dr. Crouch was  
20 president of both companies and many functions and things that  
21 might not otherwise be in the normal communications experience  
22 in this case seemed appropriate, especially in light of the  
23 fact that I certainly understood and advised my client that  
24 the purpose of the policy was to foster and create and envi-  
25 ronment in which group owners would assist and help minority

1 organizations get into broadcasting, to help by providing them  
2 with funding and programming and management experience and to  
3 essentially do what was required to make sure they could  
4 succeed. And that is all part of that process.

5 JUDGE CHACHKIN: Sir, I'm not going to get into your  
6 theories, which, as pointed out in the Designation Order, has  
7 no basis in Commission precedent. The Commission has always  
8 looked at control, not simply ownership, regardless of what  
9 you think about it. All we're talking about is here what  
10 information you provided to the Commission in order for the  
11 Commission to, to make a determination on control. That's  
12 what we're dealing with here, not your conclusions. And the,  
13 the -- and the question Mr. Cohen has asked you, why didn't  
14 you include all the information concerning how the, the enti-  
15 ties operated so the Commission would have been able to make a  
16 determination as to whether control existed?

17 MR. MAY: Well, we thought we had, Your Honor. The  
18 -- to the extent that it was material, we thought was impor-  
19 tant to submit, we certainly did.

20 JUDGE CHACHKIN: And you think these general state-  
21 ments, it, it provides facts for the Commission to act on?  
22 When you say it filed its own tax returns, who prepared the  
23 tax returns?

24 MR. MAY: They're prepared by auditors and  
25 accountants.

1 JUDGE CHACHKIN: And where are these -- who are  
2 these auditors and accountants -- who are they paid by?

3 MR. MAY: They're -- I believe they're paid by the  
4 Trinity organization as part of a business services agree-  
5 ment --

6 JUDGE CHACHKIN: Now, did you tell the Commission  
7 that, that these, that these tax returns were prepared on the  
8 basis of information provided by the accounting department of  
9 Trinity and was supplied to auditors -- or prepared by audi-  
10 tors who were paid by Trinity? Why didn't you tell the  
11 Commission that?

12 MR. MAY: Your Honor, I can't recall right now  
13 whether or not some of this material was not otherwise includ-  
14 ed in material that was filed in the Wilmington proceeding,  
15 which was incorporated by references to it.

16 JUDGE CHACHKIN: I don't see anything incorporated  
17 by reference here. You made a blanket statement here, that  
18 "NMTV also controls its own finances, i.e., generates its own  
19 revenue, solicits for its own contributions, files its own tax  
20 returns and manages its own bank accounts." That's what you  
21 said.

22 MR. MAY: Yes, sir.

23 JUDGE CHACHKIN: There's no incorporated by refer-  
24 ence to any other document. Go ahead, Mr. Cohen.

25 BY MR. COHEN:

1           Q     Now, turning to the issue about -- under (b) under  
2 who directs the station's employees. Do you see that? And  
3 that's, that's covered, that's covered on, on page 13. Do you  
4 see that? It states Mrs. Duff sets personnel policy, et  
5 cetera, et cetera. Do you see that? On page 13?

6           A     I'm on page 13.

7           Q     Sure. Well, read it to yourself, paragraph begin-  
8 ning, "Specifically..."

9                   MR. MAY: Could I just mention also, Your Honor,  
10 there is a notation right here on page 13, "as noted in Mrs.  
11 Duff's affidavit filed on September 24, '91, in the Wilmington  
12 proceeding."

13                  JUDGE CHACHKIN: And what does it say there?

14                  MR. MAY: Well, we referenced the Wilmington pro-  
15 ceeding. It says --

16                  JUDGE CHACHKIN: In this particular instance you  
17 did. I don't know what the -- what you said in the Wilmington  
18 proceeding, but you did reference it in this instance. You  
19 didn't reference it in terms of finance.

20                  MR. MAY: I'm sorry, Mr. Cohen. Now, you --

21                  BY MR. COHEN:

22           Q     Sure. No --

23           A     -- asked me about --

24           Q     Read, read paragraph 13. I want to be very fair  
25 with you, Mr. May. I'm --

1           A     Page 13 or paragraph 13?

2           Q     Excuse me. Read the first par-- full paragraph on  
3 page 13 to yourself, beginning, "Specifically..."

4           A     Yes, sir.

5           Q     Now, in terms of who directs the station's employ-  
6 ees, which is one of the criteria the Commission utilizes to  
7 determine control, why was there no mention made of the fact  
8 that Jane Duff had a role as a TBN executive and that she was  
9 assistant to Dr. Crouch in addition to her NMTV duties? Why  
10 was there no mention made of that?

11          A     I believe that has been previously communicated  
12 about in the Wilmington proceeding. And I -- it, it, it just  
13 isn't restated here specifically, although we did make refer-  
14 ence to what was going on in the Wilmington matter.

15          Q     Now, wait a minute. This is an Opposition to a  
16 Petition to Deny. This document was designed to, to, to  
17 oppose a Petition to Deny. And my question is you made refer-  
18 ence here to Mrs. Duff's duties in connection with NMTV. You  
19 state that: "She communicates directly with personnel. She  
20 alone directs the hiring. She sets personnel policy. She  
21 ensures implementation of NMTV's equal employment opportunity  
22 programs. She prepares and reviews NMTV's filings. She regu-  
23 larly checks station logs, approves purchase orders."

24                     But what it doesn't say is what her responsibilities  
25 were as a TBN executive and as an assistant to Dr. Crouch in

1 carrying out her TBN duties. My question is why was that not  
2 set forth?

3 A Mr. Cohen, this is part of an ongoing process. I  
4 guess in, in this one paragraph it's not set forward. I can't  
5 tell you whether it's also set forward in -- however, it is  
6 set forward in the September 24 submission in the Wilmington  
7 proceeding.

8 Q Well, let me ask you this question.

9 A I guess my point is is that by this point in time I  
10 believe the Agency was certainly aware that Mrs. Duff had  
11 these responsibilities. I know it certainly dates back ear-  
12 lier than that, but at least on this piece of paper it, it is  
13 not referenced on this page.

14 Q Why was it -- why, in talking about the directing of  
15 station employees, was there no mention made of the fact that  
16 Ben Miller supervised the construction of the Portland sta-  
17 tion, visited it, and supervises the chief engineer of the  
18 Portland station?

19 A Because he does those things under the auspices and  
20 direction of Mrs. Duff.

21 Q But, Mr. May, wouldn't you agree with me that that  
22 matter as to Mr., Mr. Miller's duties directly deals with  
23 directing the station's employees?

24 A No, sir.

25 Q When Mark Fountain writes a letter to him and asks

1 for advice and Ben Miller responds and says do this, this, and  
2 this, isn't he directing Mark Fountain?

3 A I mean, in that narrow instance, yes, I suppose you  
4 could say he was, but he did his things because Mrs. Duff had  
5 essentially directed him to do so. And in that sense, Mrs.  
6 Duff is the person who is responsible for those things.

7 Q Mr. May, it conc-- and concerning the construction  
8 of the Portland station, are you, are you telling me that Mrs.  
9 Duff directed the construction of the Portland station? Is  
10 that your testimony?

11 A I think that she indica-- she instructed Mr. Miller  
12 to be responsible for specific areas in that construction  
13 project, that she was the individual that people would report  
14 to and that she would make sure things were followed through  
15 on and taken care of.

16 Q And do, and do you have personal knowledge as to  
17 what Mr. Miller's role was in the construction of the Portland  
18 station?

19 A Not, not specifically. I certainly have seen the  
20 deposition material and other materials that have been gener-  
21 ated in this case.

22 Q And do you know how many times he visited Portland  
23 during the construction?

24 A Once or twice.

25 Q And, and are you aware of the correspondence that's

1 in this record between Mr. Miller and Mark Fountain concerning  
2 Mark Fountain carrying out his duties?

3 A You just indicated one letter. I think that may be  
4 the only letter.

5 JUDGE CHACHKIN: I see. Well, I'd like know when  
6 you, when you submitted this response listing page 12, 13, 14,  
7 did you do this on your own based on what your general know-  
8 ledge of how the company operated or you obtained specific  
9 information from NMT-- from National Maritime or from persons  
10 at Trinity to respond to this thing, providing allegedly  
11 factual information concerning how the entities operated? I  
12 assume you didn't do this on a whim, that you must have had  
13 discussions with persons, either Ms. Duff or someone else, to  
14 find out what the facts were before you put this in the peti-  
15 tion. Or am I wrong? You didn't have any specific  
16 discussions?

17 MR. MAY: We had communications, Your Honor, but at  
18 this point in time I, I believe we relied primarily on that  
19 material which had already been generated and submitted to the  
20 Commission in the context of the Wilmington matter. We took  
21 it out and recast it and placed it in this form, and we had no  
22 reason to believe that any of that material was otherwise not  
23 correct or hadn't been fully forthcoming.

24 JUDGE CHACHKIN: Well, prior to, to preparing your  
25 response in the Wilmington matter, did you discuss the

1 response as to what the facts were with any persons at NMTV or  
2 Trinity?

3 MR. MAY: Yes, sir.

4 JUDGE CHACHKIN: Who?

5 MR. MAY: Mrs. Duff.

6 JUDGE CHACHKIN: So, what you're saying is that the  
7 information contained here which Mr. Cohen has been bringing  
8 up is all based on information which Ms. Duff gave you?

9 MR. MAY: Yes, sir. And then following that early  
10 petition cycle in May of '91, there was a follow-up request  
11 for information from the Commission in September of '91 and we  
12 prepared long affidavits in response to that material. And in  
13 that process, we communicated with a wider field of people  
14 other than just Mrs. Duff and collected the information that  
15 was then provided.

16 JUDGE CHACHKIN: And what you're telling me -- what,  
17 what, what do you mean when you said you had this information  
18 from Wilmington and somehow you put it in, in this document?  
19 Do we have -- is that in evidence, the Wilmington Opposition,  
20 the Opposition to Wilmington?

21 MR. COHEN: No, sir.

22 JUDGE CHACHKIN: Well, the only way to see whether  
23 there's any basis for what the witness is saying is by having  
24 the affidavit of Ms. Duff from Wilmington, if you have it, to  
25 show it to him.